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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 35, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF MAINE, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, NEW YORK, NEW JERSEY, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA AND FLORIDA

MOTION FOR JUDGMENT

The United States of America moves the Court for judgment as prayed in the complaint on the ground that there is no genuine issue as to any material fact and the United States is entitled to judgment as a matter of law.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

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OCTOBER TERM, 1969

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BRIEF FOR THE UNITED STATES IN SUPPORT OF MOTION FOR JUDGMENT

JURISDICTION

The jurisdiction of this Court rests upon Article III,, sec. 2, cl. 2, of the Constitution and Title 28, United States Code, Section 1251(b)(2).

STATUTES INVOLVED

1. The Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315, provides in pertinent part:

> SEC. 2. When used in this Act—
>
> (a) The term "lands beneath navigable waters" means—
>
> * * * * *
>
> (2) all lands permanently or periodically covered by tidal waters up to but not above

the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

* * * * *

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters,

clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

* * * * *

(g) The term "State" means any State of the Union; [67 Stat. 29, 43 U.S.C. 1301]

* * * * *

SEC. 3. *Rights of the States.*—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof; [67 Stat. 30, 43 U.S.C. 1311]

* * * * *

SEC. 4. *Seaward Boundaries.*—

The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may ex-

tend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. [67 Stat. 31, 43 U.S.C. 1312]

* * * * *

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed. [67 Stat. 32, 43 U.S.C. 1302]

2. The Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331–1343, provides in pertinent part:

SEC. 2. Definitions.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

* * * * *

SEC. 3. Jurisdiction Over Outer Continental Shelf.—

(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act. [67 Stat. 462, 43 U.S.C. 1332]

QUESTION PRESENTED

Whether the right to explore and exploit the natural resources of the continental shelf underlying the Atlantic Ocean beyond three miles from the coast line belongs to the United States or to the defendant States.

STATEMENT

This suit was brought to establish, as against the defendant States, the rights of the United States in the lands and natural resources of the bed of the Atlantic Ocean more than three geographical miles seaward from the coast line. The complaint alleges (pp. 4, 6–9) that prior to May 22, 1953, the United States had, as against the defendant States, exclusive sovereign rights over the seabed and subsoil under-

lying the Atlantic Ocean, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast to the outer edge of the continental shelf, for the purpose of exploring the area and exploiting its natural resources; that in 1953, by the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315, Congress gave the defendant States ownership of the bed of the three-mile territorial sea within their boundaries;[1] and that otherwise the situation in the Atlantic Ocean remains as it was. The complaint further alleges (pp. 4–9) that the defendant States claim rights in the seabed and subsoil of the continental shelf, more than three miles seaward from the ordinary low-water mark and from the outer limit of inland waters, adverse to the United States, and specifically (p. 5) that the defendant State of Maine has purported to grant exclusive oil and gas exploration and exploitation rights in approximately 3.3 million acres of submerged land of the Atlantic Ocean in the area in controversy. It alleges (pp. 5–9) that these adverse claims and actions interfere with federal development of the area under the Outer Continental Shelf Lands Act, 67 Stat. 462. The prayer (p. 10) is for a declaration of the exclusive rights of the United States, as against the defendant States, in the subsoil, seabed, and natural

[1] Section 4 of the Submerged Lands Act, 43 U.S.C. sec. 1312, confirmed the boundary of each of the original States as a line three geographical miles distant from its coast line, and approved and confirmed past or future claims to that distance by other States. Eleven of the defendants are original States. Maine and Florida are not, but have claimed boundaries at least three miles from the coast.

resources underlying the Atlantic Ocean, including the Straits of Florida, more than three geographical miles from the ordinary low-water line and from the outer limit of inland waters, and for an accounting and other proper relief.

Following the Court's order of June 16, 1969, allowing the complaint to be filed, 395 U.S. 955, answers were filed by all the defendant States. The answers differ somewhat in form, but in essence they all deny the rights alleged by the United States and assert in the several States, independently of the Submerged Lands Act, the exclusive right to explore and exploit the natural resources of the seabed adjacent to their respective coasts, beyond as well as within the three-mile limit. All the defendants deny that the United States is entitled to an accounting, and Maine, New Hampshire, Massachusetts, New York, New Jersey, Delaware, South Carolina, and Georgia specifically deny having derived any sums from the disputed area. Maine admits to having given an exploration license covering certain seabed lands, "some portion of which lands may lie more than three geographic miles seaward" from the coast line. Me. Ans., par. V, p. 2. Massachusetts, against whom no such allegation was made, also denies having granted rights in the seabed more than three miles from the coast line. Mass. Ans., par. VI, pp. 2–3.

In addition to those denials, all the defendants except Florida assert as an affirmative defense that they are entitled, as successors to grantees of the British Crown (and also, in the case of New York, the Dutch Crown), to control exploitation of the natural resources of the seabed, within the seaward limits of national

jurisdiction established by the United States. Rhode Island also asserts as a separate defense that it acquired *dominium* and *imperium* over the adjacent seabed by virtue of its declaration of independence from the British Crown, May 4, 1776. R.I. Ans., Third Defense. Georgia alleges as a first defense that the complaint fails to show a case or controversey (Ga. Ans., p. 1); as a second defense, that the complaint fails to state a claim on which relief can be granted (Ga. Ans., p. 2); and as a fifth defense, that any rights the United States may have had in the disputed area were transferred to Georgia by the boundary settlement agreement of 1802 (Ga. Ans., p. 4). Without stating it as a separate defense, Florida alleges that in *United States* v. *Florida,* 363 U.S. 121, this Court sustained Florida's boundary in the Atlantic Ocean, as well as in the Gulf of Mexico, as described in the State's 1868 Constitution; that that boundary runs "southeastwardly along the coast to the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands"; and that the Gulf of Mexico meets the Atlantic Ocean in the vicinity of Palm Beach, Florida. Fla. Ans., pars. III–IV, VII–IX, pp. 1–4.

ARGUMENT

A. INTRODUCTION AND SUMMARY

The issue in this case is whether the United States has, as against the defendant States, the exclusive right to explore and exploit the natural resources of the continental shelf under the Atlantic Ocean, more than

three miles from the coast line.[2] Our submission is that no Atlantic Coast State can have rights in submerged lands beyond three miles; each of the defendant States, on the other hand, claims beyond that limit. That is the controversy tendered to the Court on the present motion, pretermitting for the moment any possible disputes about the exact location of the three-mile line (if the United States prevails) or the actual limit of each State's rights beyond the three-mile belt (if any such claim is sustainable).

We establish first (*infra*, pp. 12–20) that this disagreement between sovereigns presents a justiciable controversy, fully ripe for adjudication. And we suggest that the Court itself should rule on the present motion, without reference to a Special Master.

Next (*infra*, pp. 20–30) we turn to the claim of the States of the Atlantic Coast that they have held, and still retain, rights in the continental shelf, both within the three-mile belt and beyond, since before the formation of the Union or their admission to it. We answer that this contention is effectively foreclosed by the Court's decisions regarding State claims in the Pacific Ocean and the Gulf of Mexico, and is, at all events, without merit. Specifically, we note that the concept of exploitive rights in the marginal sea was unknown at the time and, moreover, that whatever rights in the seabed may have existed passed to the United

[2] The "coast line" is a political line comprising two elements: the line of ordinary low water along the open coast, and, elsewhere, lines marking the outer limits of inland waters. Submerged Lands Act, sec. 2(c), 67 Stat. 29, 43 U.S.C. 1301(c); *United States* v. *Louisiana*, 363 U.S. 1, 66, fn. 108.

States as an aspect of external sovereignty upon the formation of the Union.

We then (*infra*, pp. 30–39) consider what grants Congress may subsequently have made to the States which might support the present claims. We find that only the Submerged Lands Act of 1953 is relevant, and that the grant there made is expressly limited to three miles in the Atlantic Ocean. Finally, we take up and answer the special claim advanced by Georgia under the boundary settlement agreement of 1802.

B. THE NATURAL RESOURCES OF THE CONTINENTAL SHELF, ALTHOUGH BEYOND THE TERRITORIAL LIMITS OF THE UNITED STATES, ARE SUBJECT TO JUSTICIABLE RIGHTS WHICH MAY PROPERLY BE ADJUDICATED ON THE PRESENT MOTION

The national boundary of the United States is at the outer limit of the territorial sea, three geographical miles from the coast line. The area here in dispute is entirely seaward of that limit, but international law recognizes the exclusive right of a coastal nation to control exploitation of the natural resources of the continental shelf beyond its territorial sea. Internationally, the rights of a coastal nation over its continental shelf are now stated in the Convention on the Continental Shelf, 15 U.S.T. (Pt. 1) 471.[3] The internal allocation

[3] Article 1 of the Convention defines the term "continental shelf":

> For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent

of that right as between Nation and State is a domestic concern [4] and is a proper subject of adjudication.

Domestically the United States' jurisdiction over the natural resources of the continental shelf was first asserted by Presidential Proclamation No. 2667, September 28, 1945, 59 Stat. 884.[5] That was followed in 1953 by the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315, which gave the coastal States the submerged lands and resources within their boundaries, not exceeding three geographical miles from the coast line in the Atlantic or Pacific or three leagues

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waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands. [15 U.S.T. (Pt. 1) 473.]

Article 2 then provides:

1. The coastal State [*i.e.*, Nation] exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation. [15 U.S.T. (Pt. 1) 473.]

[4] See Hearings, S. Committee on Interior and Insular Affairs, S.J. Res. 13, 83d Cong., 1st Sess. (1953) 1067.

[5] The Proclamation was accompanied by a press release that defined the "continental shelf" as being generally considered to include the submerged land contiguous to the continent and covered by no more than 100 fathoms (600 feet) of water. The press release also made clear that the Proclamation "does not touch upon the question of Federal versus State control." S. Rept. No. 411, 83d Cong., 1st sess. (1953) 53 (Cong. Doc. Ser. No. 11660).

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(nine miles) in the Gulf of Mexico, and which again asserted the jurisdiction and control of the United States over natural resources of the continental shelf seaward of those limits (§ 9, 43 U.S.C. 1302). Administration of the latter rights was provided, in the same year, by the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331–1343. This Court has previously adjudicated the right to the natural resources of the continental shelf as between the United States and coastal States. *United States* v. *Louisiana,* 340 U.S. 899; *United States* v. *Texas,* 340 U.S. 900; *United States* v. *Louisiana et al.,* 364 U.S. 502; *United States* v. *California,* 382 U.S. 448; *Texas Boundary Case,* 394 U.S. 836. Such an adjudication is equally appropriate here.

2. There is, accordingly, no merit to the suggestion advanced by Georgia (Ans., pp. 1–2) that the present complaint does not reveal a case or controversy and fails to state a claim on which relief can be granted. The complaint alleges that the United States has exclusive rights to explore and exploit the natural resources of the continental shelf more than three geographic miles from the coast line, and that the defendant States claim rights adverse to those of the United States. Complaint, p. 4. As to Maine, there is a further allegation that the State has purported to grant exclusive oil and gas exploration and exploitation rights in the disputed area (Complaint, p. 5), reflecting a situation indistinguishable from that held to create a justiciable case or controversy in *United States* v. *California,* 332 U.S. 19, 24–26. It is true that there is no allegation that any other of the defendant

States has similarly purported to exercise control over the disputed area; but in this respect their situation is like that of Texas, Mississippi, Alabama, and Florida, in *United States* v. *Louisiana et al.,* where the Court held that States that might want to make claims similar to that of Louisiana, even though they had taken no affirmative action, were not only proper parties but were so essential to a proper disposition of the case that it could not proceed without them. *United States* v. *Louisiana,* 354 U.S. 515. Georgia admits that it asserts a claim adverse to that alleged by the United States. Ga. Ans., p. 2, Third Defense, par. 4. Nothing more is required to present a justiciable controversy.

3. Nor is there any substance to Florida's plea that the case should be dismissed as to that State because this Court's decision in *United States* v. *Florida,* 363 U.S. 121, has already delimited Florida's rights to submerged lands and natural resources under the Atlantic Ocean (subject to possible need for supplemental proceedings to identify the defined boundary with precision). Fla. Ans., pp. 1–4, pars. III, IV, VII, IX. Florida alleges that that decision sustained Florida's right to a boundary in the Atlantic Ocean as described in Article I of the Florida Constitution of 1868, from the Chattahoochee River "southeastwardly along the coast to the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands * * *." Fla. Ans., pp. 1–2, par. III. The fact is, however, that neither the opinion cited, nor the decree subsequently entered pursuant thereto, 364 U.S. 502, supports Florida's contention.

The Court made itself clear in the opinion: in quoting the maritime portion of the Florida boundary as described in Article I of the Florida Constitution of 1868, only the portion relating to the Gulf of Mexico was italicized, indicating that this was the part with which the opinion was concerned. *United States* v. *Florida,* 363 U.S. 121, 123–124, fn. 4. Indeed, throughout the opinion, the Court repeatedly limited its discussion to the Gulf of Mexico, and in summing up its conclusion it said (363 U.S. 121 at 129):

> We hold that the Submerged Lands Act grants Florida a three-marine-league belt of land *under the Gulf,* seaward from its coastline, as described in Florida's 1868 Constitution. [Emphasis added.]

Similarly, the decree provided (364 U.S. 502, 503):

> 2. As against the United States, the defendant States are respectively entitled to all the lands, minerals and other natural resources *underlying the Gulf of Mexico,* extending seaward from their coast lines for a distance of three leagues in the case of Texas and Florida and three geographic miles in the case of Louisiana, Mississippi and Alabama * * *. [Emphasis added.]

Beyond quoting the entire maritime boundary description of the Florida Constitution (363 U.S. at 123–124, fn. 4), the Court made no reference to the State's boundary in the Atlantic, and its conclusion that Congress had "approved" the 1868 boundary, within the meaning of the Submerged Lands Act, could be significant only as to the Gulf boundary, where historic boundaries could entitle a State to more than three miles of submerged lands. In the

Atlantic, the Submerged Lands Act itself approved boundaries out to a distance of three miles, and excluded greater claims, so that historic boundaries were irrelevant. *Infra,* pp. 31–32.

It is true that Florida's entire maritime boundary, including the Straits of Florida and the Atlantic coast, was put in issue by the amended complaint and Florida's answer in *United States* v. *Louisiana et al.,* No. 11, Orig., October Term, 1957 (now No. 9, Orig.). Amended Complaint, pp. 16–18; Defenses [of Florida] to Amended Complaint, p. 2, First Defense pars. 2, 4–5. And it may be that questions as to the Atlantic boundary are still pending before the Court in that case under the Court's retained jurisdiction. See 364 U.S. 502, 504. That, however, is no bar to resolution of the issue in this case, where rights underlying the Atlantic Ocean will be determined for all other States on a ground that may well affect Florida's claim. While the inclusion or exclusion of Florida as a party in this case is of little moment to the United States, we deemed it appropriate to join that State here, rather than re-open proceedings in No. 9, Original, for this purpose, since that case is otherwise concerned only with rights in the Gulf of Mexico.[6]

4. And, finally, there is—at least at this stage—no occasion to refer the case to a Special Master. The

[6] The further question raised by Florida (Fla. Ans., p. 3, par. VIII), of where its Atlantic and Gulf boundaries meet, appears to be the sort of interpretative detail that may more appropriately be left for supplemental proceedings hereafter. Cf. *United States* v. *Louisiana et al., supra,* 363 U.S. at 79; *United States* v. *California, supra,* 332 U.S. at 25–26. In no event should any dispute on this score require present reference of the case to a Special Master or otherwise delay resolution of the basic controversy.

question our motion tenders is *not* where the three-mile limit of State ownership of submerged lands is located as to each of the defendants—the kind of issue now before a Special Master in No. 9, Original, with respect to the State of Louisiana. So far as the pleadings disclose, the parties in this case are not in dispute on that matter. The critical question here is one of law, not geography: whether the Atlantic Coast States are restricted to the three-mile grant of the Submerged Lands Act or may prove good claims farther seaward.

As the remainder of this brief will indicate, our view is that any claims beyond three miles are foreclosed by prior decisions of this Court, which form the predicate for subsequent Congressional action. Thus, the threshold question is whether the Court is disposed to reconsider the premise of what has gone before. Obviously, no Special Master can aid in that determination. Nor is the task very different if the Court acquiesces in the invitation to revisit familiar ground. The proposition that—except by later Congressional grant—the original States acquired no property in the marginal sea, or beyond, turns on official history, the documents evidencing which are subject to judicial notice.

Accordingly, we believe the present motion is appropriate. If, after considering briefs and oral arguments by the parties—supplemented by whatever historical materials are deemed relevant—the Court should conclude that no State claim in the continental shelf beyond three miles is sustainable, the United States would be entitled to judgment quieting its ex-

clusive rights and enjoining State interference seaward of that line. That would be a practical end of the case, at least until such time as valuable mineral discoveries and irreconcilable disagreements required the Court to fix the exact location of the dividing line on the ground.

If, on the other hand, the Court were to conclude that State claims beyond three miles in the Atlantic are legally tenable, two options would be open. The Court might well now resolve itself the ultimate validity and extent of such claims—as it did in comparable circumstances in *United States* v. *Louisiana*, 363 U.S. 1, and *United States* v. *Florida*, 363 U.S. 121. Or it might refer all or part of the remaining questions to a Special Master. Cf. *Louisiana Boundary Case*, 394 U.S. 11. But, even on this hypothesis (which we frankly view as unlikely), it seems to us that all interests would have been served by the Court's initial ruling on the present motion. Indeed, confronted with this Court's prior decisions, it is difficult to appreciate how a Special Master could intelligently deal with a blanket reference and fashion a recommendation without special guidance as to what is subject to being re-opened.

So saying, we do not ask the Court to grant our motion summarily. We expect that the defendant States will respond promptly on the question of procedure, perhaps suggesting referral of the entire controversy to a Special Master. Thereupon, we would anticipate a ruling from the Court indicating the course of further proceedings. If the Court should agree with us that present reference to a Special Master is inappropriate, we

suggest the defendant States be allowed a substantial period (say to June 1) to file a brief and documents in response to the present submission, that the United States be permitted to reply thereafter (say by September 1),[7] and that oral argument be scheduled for the opening of the next Term.

C. EXCEPT AS GRANTED BY CONGRESS SINCE STATEHOOD, THE COASTAL STATES HAVE NO RIGHTS IN THE SUBMERGED LANDS OR NATURAL RESOURCES SEAWARD OF THE COASTLINE

We consider in a moment what grants of submerged lands underlying the ocean Congress has made to the Atlantic Coast States (*infra*, pp. 30–39). But, as we understand their claims, none of the defendant States, except only Georgia on an alternative basis, rests its claim beyond three miles from the coastline on any Congressional action since statehood.[8] Their assertion is, rather, that they have continuously held rights in the continental shelf—both within and beyond the three-mile territorial sea—since before the formation of the Union, or their admission to it, and that these rights exist quite independently of any subsequent grant from the United States. That proposition, however, has been unequivocally rejected by this Court in

[7] The United States views the present brief in support of its motion for judgment as an opening brief, and, accordingly, asks only an opportunity to reply to the submission of the defendant States, if that seems appropriate.

[8] The Act of June 25, 1868, 15 Stat. 73, relied on by Florida as a congressional approval of the State's boundary at the edge of the Gulf Stream as claimed by the Florida Constitution of 1868, goes only to the location of the state boundary, not to the ownership of the submerged lands and resources.

deciding comparable claims in the Pacific Ocean and the Gulf of Mexico and is, at all events, unsound.

1. In *United States* v. *California,* 332 U.S. 19 and 804, decided prior to the Submerged Lands Act, the Court held that the United States, rather than the State, had paramount rights in the submerged lands and natural resources underlying the territorial sea, seaward of the ordinary low-water line and outer limit of inland waters. California had claimed title to those submerged lands and resources on the ground that it was entitled to stand in that respect on an equal footing with the original States, as Alabama had been held entitled, with respect to lands under the navigable waters of Mobile Bay, in *Pollard* v. *Hagan,* 3 How. 212. In support of that thesis, California discussed at length the colonial charters and post-revolutionary rights of the original States, in an effort to show that they had such rights as California claimed. The Court held the claim of "equal footing" to be unavailing, because it concluded that the original States themselves had no rights in the submerged lands or natural resources seaward of the low-water line and outer limit of inland waters. Pointing out that as late as 1876 there was still considerable doubt in England about the scope and even the existence of the territorial sea, the Court said (332 U.S. at 31–32; footnotes omitted):

> From all the wealth of material supplied * * * we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it. * * *

> At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders. * * * Neither the English charters granted to this nation's settlers, nor the treaty of peace with England, * * * showed a purpose to set apart a three-mile ocean belt for colonial or state ownership. * * *

The Court went on to hold that the concept of a territorial sea arose and gained international acceptance after the formation of the Union, largely as a result of the efforts of the United States. Both because acquisition of the territorial sea had thus been accomplished by the national government rather than by the States, and because the territorial sea was primarily affected by national concerns of defense, international relations, and external sovereignty, the Court held that rights in the submerged lands and resources of the territorial sea (unlike inland navigable waters) should be considered attributes of national sovereignty, rather than of state sovereignty. 332 U.S. at 33–36.

Three years after the *California* decision, the Court made similar holdings with respect to Louisiana and Texas. *United States* v. *Louisiana,* 339 U.S. 699; *United States* v. *Texas,* 339 U.S. 707. Louisiana sought to differentiate its case from California's because Louisiana Act 55 of 1938, 49 La. Rev. Stats. (1950) 1–3, had purported to extend the State's boundary to a distance of 27 miles from the coast line. The Court rejected that distinction, saying (339 U.S. at 705), "The matter of state boundaries has no bear-

ing on the present problem." It pointed out that the predominance of national interests over state interests increased rather than diminished as one moved farther seaward, so that the State's purported extension of its boundaries (the validity of which the Court did not consider) merely emphasized the strength of the federal claim over the state claim where the seabed was concerned.

Texas likewise sought to differentiate its case from California's, its ground being that until its admission to the Union as a State, Texas had been an independent republic which, by its Act of December 19, 1836, 1 Laws Rep. Tex. 133, had claimed a 3-league territorial sea where it exercised all the elements of external as well as domestic sovereignty. The Court rejected that distinction also, holding that when Texas became a State of the Union, it necessarily did so on an equal footing with the original States, so that its relinquishment of national sovereignty to the Federal Government carried with it all the attendant attributes, including exclusive rights in the submerged lands and resources of the territorial sea. *United States* v. *Texas, supra,* 339 U.S. at 716–720.

Thus, while the Court has not yet directly adjudicated the rights of the original States, its conclusion that they had no rights in the submerged lands or resources of the territorial sea was the ground of decision in each of the foregoing cases. Indeed, because the ruling predictably would affect their own claims, some of the Atlantic Coast States participated, directly or indirectly, in the first *California* case as *amici curiae.* See 332 U.S. at 21–22. So,

also, although the Congress did not purport to foreclose greater claims, the underlying premise of the Submerged Lands Act—which in 1953 granted a three mile belt to the States bordering on the Atlantic Ocean—is that the present defendants theretofore held no rights in the bed of the territorial sea and thereafter would hold none farther seaward, where federal administration was provided for under the Outer Continental Shelf Lands Act enacted in the same year. And that has, of course, been the premise of all the subsequent decisions in this Court applying the Submerged Lands Act in the Pacific Ocean and the Gulf of Mexico—an exercise in futility if that statute does not define the outward limit of State rights in the continental shelf. See *United States* v. *Louisiana et al.*, 363 U.S. 1; *United States* v. *Florida*, 363 U.S. 121; *United States* v. *California*, 382 U.S. 448; *United States* v. *Louisiana et al.* (Texas), 389 U.S. 155; *Texas Boundary Case*, 394 U.S. 1; *Louisiana Boundary Case*, 394 U.S. 11.

In our view, there is no occasion to re-examine all that has gone before, with the risk of unsettling important property rights adjudicated by this Court on a consistent understanding in which the Congress has acquiesced. Accordingly, we submit that the claims of the defendant States beyond three miles from their coastlines properly may be rejected on the basis of prior decisions without further inquiry. But, even if the underlying assumptions of the controlling cases were to be reconsidered, we believe the same result is compelled.

2. The first hurdle to the present claims advanced by the Atlantic States—which, with one exception,

depend, directly or indirectly, on the proposition that at, or before, the formation of the Union the original colonies acquired rights in the continental shelf—is that such a concept was not then recognized in international law, and certainly not in English law, upon which the claims must rest. Indeed, the then prevailing English rule was that the rights of the Crown stopped at the water's edge.

That such was the law in Great Britain itself even a century later is authoritatively settled by the decision of the House of Lords in *The Queen* v. *Keyn* (1876), L.R. 2. Exch. Div. 63, cited by this Court in the first *California* case (332 U.S. at 33). But perhaps of more immediate relevance to the question whether the same rule applied to British colonies are recent judgments of the Supreme Court of Canada and of the High Court of Australia, two courts whose position in the British Commonwealth entitle their views to particular respect.

The Supreme Court of Canada, adjudicating a dispute between Canada and the Province of British Columbia similar to the present case, recently concluded, after an exhaustive review of the British authorities, that British colonial charters did not include any territorial sea, and indeed that the "realm of England" stopped at the low-water line until some time subsequent to the Territorial Waters Jurisdiction Act of 1878, c. 73. *Re: Offshore Mineral Rights of British Columbia* [1967] Canada L. Rep. (S. Ct.) 792, 65 D.L.R. (2d) 363. In its joint opinion, the court said of the Territorial Waters Jurisdiction Act, which extended admiralty jurisdiction to offenses committed on the open sea

within a marine league (three miles) of the coast ([1967] Canada L. Rep. (S. Ct.) at 805, 65 D.L.R. (2d) at 364):

> The Act did no more than deal with what was regarded as a gap in the Admiral's jurisdiction. It did not enlarge the realm of England, nor did it purport to deal with the juridical character of British territorial waters and the sea-bed beneath them.
>
> We have to take it, therefore, that even after the enactment of the *Territorial Waters Jurisdiction Act* the majority opinion in *Reg.* v. *Keyn* that the territory of England ends at low-water mark was undisturbed.

The court went on to hold that such jurisdiction as was asserted over the territorial sea pertained to external sovereignty and remained in the crown, with only limited authority delegated to the Dominion of Canada, at least until 1919, and that it passed directly from the Crown to the Dominion when Canada became a sovereign State, at some time between 1919 and 1931.

> The sovereign State which has the property in the bed of the territorial sea adjacent to British Columbia is Canada. At no time has British Columbia, either as a colony or a province, had property in these lands. [(1967) Canada L. Rep. (S. Ct.) at 816, 65 D.L.R. (2d) at 375.]

Still more recently, the same view of the territorial limits of the "realm of England" and of the British colonies has been expressed in seriatim opinions of Barwick, C. J., and Windeyer, J., in the case of *Bonser* v. *La Macchia*, 43 Aust. L.J. Rep. 411, de-

cided by the High Court of Australia on August 6, 1969.[9] The actual issue in that case was whether a commonwealth statute regulating fishing in "Australian waters beyond territorial limits" could apply at a point 6½ miles off the coast, and the decision turned on an interpretation of statutory language that is not relevant here. However, in the course of his discussion, Chief Justice Barwick said (*id.* at 414):

> I cannot read the majority decision in *Reg.* v. *Keyn* (*The Franconia*) (1876), 2 Ex. D.63, in any other sense than that at common law the realm ended at the edge of the sea and that it did not extend to the bed of the sea, i.e., to any portion of the earth's crust adjacent to the realm covered at low tide, nor did it extend to the waters which washed the shores. * * *
>
> * * * * *
>
> I think it is essential to bear in mind that when colonies were formed all that relevantly occurred was that a specified land mass was placed at the outset under governorship, and later, under the control of a legislature. The instruments setting up the colonies did not in terms include as territory and subject to colonial governorship any part of the bed of the sea or the superincumbent waters. * * *
>
> I respectfully agree with the conclusion drawn in connexion with the seabed and the waters above it adjacent to the Province of British Columbia by the Supreme Court of Canada in *Reference re Ownership of Off-*

[9] Copies of the opinions have been lodged with the Court and given counsel for defendants.

> *Shore Mineral Rights* (1968), 65 D.L.R. (2d) 353, at pp. 365 and 366–367 and with the reasons which were given for that conclusion. It is quite clear historically, if one examines the descriptions of the territory placed under governorship, that the territory of the original colony of New South Wales except as to certain islands of the Pacific did not extend beyond low water mark on the eastern coastline of the Continent and of the Island of Tasmania: and that as each of the colonies of Victoria and Queensland were severed from it, the territory of those colonies by description also ended at low water mark. The same can be said of the other Australian colonies. Thus the reasons given in the Canadian case are applicable to the circumstances of those colonies.

Windeyer, J., after expressing similar views in his separate opinion, concluded (*id.* 430–431):

> The view I have expressed accords with the decision of the Supreme Court of Canada which I have already mentioned. It accords too with what I take to be the general tenor of present-day doctrines of federalism in the United States: see *United States* v. *California* (1947), 332 U.S. 19, 38; *United States* v. *Louisiana* (1950), 339 U.S. 699; *United States* v. *Texas* (1950), 339 U.S. 707, 716; cf. *Alabama* v. *Texas* (1954), 347 U.S. 272, 274–277, 281.[10]

3. What is more, even if the colonies and original States had had boundaries in the sea, as they now

[10] But cf. the opinion of Kitto, J., 43 Aust. L. J. Rep. at 421, expressing some doubts as to the significance of *The Queen* v. *Keyn*.

claim,[11] it would not follow that they are entitled to the submerged lands and resources within those boundaries. As this Court noted in the first *Louisiana* case "[t]he matter of state boundaries has no bearing on the present problem." 339 U.S. at 705. That is because control of the bed of the territorial sea is so directly related to the external aspects of national sovereignty, including defense and foreign relations, that rights in it must be deemed to be attributes of national sovereignty and to belong to the federal government—unlike ownership of the beds of inland navigable waters, long held to be an attribute of the domestic sovereignty of the States. See *United States* v. *California*, *supra*, 332 U.S. at 29–30, 36. Thus, even if the concept of exclusive exploitative rights in the seabed had existed when the Union was formed or when the defendant States became members of it, the primary relationship of those rights to external rather than domestic sovereignty would have made the rights attributes of national rather than state sovereignty, just as it did when Great Britain transferred external sovereignty to Canada. *Re: Offshore Mineral Rights of British Columbia, supra,* [1967] Canada L. Rep. (S. Ct.) at 815–817, 65 D.L.R. (2d) at 374–376.

It is no answer to assert, as does Rhode Island (R.I. Ans., Third Defense), that it declared its independence from the Crown of England on May 4, 1776, before the formation of the Union. First, the

[11] Me. Ans., p. 3; N.H. Ans., p. 4; Mass. Ans., p. 3; R.I. Ans., Second Defense; N.Y. Ans., p. 3; N.J. Ans., p. 3; Del. Ans., p. 3; Md. Ans., p. 3; Va. Ans., p. 2; N.C. Ans., p. 3, par. VII; S.C. Ans., p. 4; Ga. Ans., p. 3, Fourth Defense.

several States never did achieve the status of independent external sovereignty; external sovereignty passed directly from the British Crown to the United States. *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 315–318. During the Revolution, it was lodged in the Congress, not in the individual States. *Penhallow* v. *Doane*, 3 Dall. 54, 80–82. But, at all events, even if Rhode Island (or any other State) had for some period possessed external sovereignty, and if that sovereignty had included as an attribute the right to control the exploration and exploitation of the natural resources of the adjacent seabed, still, when Rhode Island became a member of the Union, all the elements of its external sovereignty would have passed to the United States, including the right to control exploration and exploitation of the natural resources of the seabed, just as they did when the Republic of Texas became a State of the Union. *United States* v. *Texas*, 339 U.S. 707.

The consequence is, as this Court recently stated in deciding the claims of the Gulf States after passage of the Submerged Lands Act, that "except as granted by Congress, the States do not own the lands beneath the marginal seas." *United States* v. *Louisiana et al.*, *supra*, 363 U.S. at 77. We turn to the question what Congress has given the States of the Atlantic Coast.

D. CONGRESS HAS NOT GIVEN THE DEFENDANT STATES RIGHTS IN THE SUBMERGED LANDS OR RESOURCES UNDERLYING THE ATLANTIC OCEAN MORE THAN THREE MILES FROM THE COAST LINE

1. The remaining question, then, is what rights Congress has given the defendant States in the sub-

merged lands and resources seaward of their coast lines. Except as to Georgia (see *infra,* pp. 33–39), the only Act of Congress claimed to effect such a grant is the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. 1301–1315.[12] Here, as in *United States* v. *Louisiana et al., supra,* 363 U.S. at 7, "Since the Act concededly did not impair the validity of the *California, Louisiana,* and *Texas* cases, which are admittedly applicable to all coastal States, this case draws in question only the geographic extent to which the statute ceded to the States the federal rights established by those decisions."

Section 4 of the Submerged Lands Act, 67 Stat. 31, 43 U.S.C. 1312, confirmed the seaward boundary of each of the original States as a line three geographical miles from the coast line, and approved past or future claims by other States to boundaries three miles from the coast line, without thereby questioning or prejudicing more extended boundaries existing at or before statehood or already approved by Congress. Section 3(a) gave the States the "lands beneath navigable waters" within their boundaries, and the natural resources within such lands and waters, 67 Stat. 30, 43 U.S.C. 1311; while section 2(b) provided that "in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean * * *."

[12] "The Act was sustained in *Alabama* v. *Texas,* 347 U.S. 272, as a constitutional exercise of Congress' power to dispose of federal property." *United States* v. *Louisiana et al., supra,* 363 U.S. at 7.

67 Stat. 29, 43 U.S.C. 1301(b). Section 9 asserted federal jurisdiction and control over the natural resources of the subsoil and seabed that are seaward of the "lands beneath navigable waters" given to the States, 67 Stat. 32–33, 43 U.S.C. 1302. Federal jurisdiction in the latter area was reasserted and implemented by the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331–1343.

Both Maine and Florida have claimed boundaries in the Atlantic at least three geographical miles from the coast line,[13] and the other defendants are original States. Thus, all of the defendant States are entitled under the Submerged Lands Act to the submerged lands and resources within three geographical miles of the coast line. However, none of them is or could be entitled to more, since section 2(b) of the Act clearly provides that in no event shall the "lands beneath navigable waters" granted by the Act, nor the "boundaries" to which the grant is restricted, be construed as extending from the coast line more than three geographical miles into the Atlantic Ocean.[14]

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[13] Me. Rev. Stats. (1964), c. 1, sec. 2, asserts jurisdiction in the sea to whatever extent may be claimed by the United States. The United States claims a 3-mile territorial sea. *United States* v. *California*, *supra*, 332 U.S. at 33–34; see 4 Whiteman, *Digest of International Law* (1965) pp. 14–137. Fla. Const. (1968), Art. II, sec. 1, claims a boundary in the Atlantic Ocean three geographical miles from the coast line, or at the edge of the Gulf Stream, whichever is farther seaward.

[14] "Boundaries" and "lands beneath navigable waters," as defined in section 2(b) may extend up to three leagues from the coast in the Gulf of Mexico, if they were so at statehood or had been recognized by Congress. Other provisions of the Act refer to such boundaries without limiting them to the Gulf of Mexico. Sec. 2(a)(2), 43 U.S.C. 1301(a)(2); Sec. 4, 43

Since the defendants' only rights in the submerged lands and resources seaward of the coast line are those granted by the Submerged Lands Act, and the rights so granted extend only three geographical miles from the coast line, the defendant States can have no rights in the seabed more than three miles from the coast line.

2. We turn, finally, to the special claim advanced by Georgia that the rights of the United States, if any, in the submerged lands of the Atlantic Ocean adjacent to the coast of Georgia were transferred to Georgia by the boundary settlement agreement of 1802. Ga. Ans., p. 4. The terms and history of that agreement do not support such an interpretation.

The 1802 agreement was the arrangement whereby Georgia ceded to the United States "all the right, title, and claim, which the said State has to the jurisdiction and soil" of lands west of the Chattahoochee River, in exchange for certain undertakings by the

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U.S.C. 1312. This apparent inconsistency is explained by the fact that the limitations of section 2(b) were added by a floor amendment in the Senate, without at the same time removing from other sections the broader language that the amendment deprived of meaningful application outside the Gulf of Mexico. There can be no doubt that the amendment is controlling. Its purpose was to impose as a mater of law a limitation that had been generally assumed to exist as a matter of historic fact. See *United States* v. *California*, 381 U.S. 139, 154–156. As explained by Senator Holland, the author of both the bill and the amendment, the purpose of the amendment was "to have the language more clearly spelled out than it was in the original measure, to the effect that there is no intention whatsoever to grant boundaries beyond 3 geographical miles in either the Atlantic or the Pacific * * *." 99 Cong. Rec. 4116, quoted in 381 U.S. at 155.

United States, including payments to be made from proceeds of the ceded lands, extinguishment of Indian title to lands in Georgia, and the following (*American State Papers,* 1 Public Lands 114):

> Art. II. The United States accept the cession above mentioned, and on the conditions therein expressed; and they cede to the State of Georgia whatever claim, right, or title, they may have to the jurisdiction or soil of any lands lying within the United States, and out of the proper boundaries of any other State, and situated south of the southern boundaries of the States of Tennessee, North Carolina, and South Carolina, and east of the boundary line hereinabove described, as the eastern boundary of the territory ceded by Georgia to the United States.

Presumably Georgia relies on the foregoing language as effecting a cession of the rights of the United States in the submerged lands and natural resources underlying the Atlantic Ocean adjacent to the coast of Georgia; but the terms used fall far short of the specificity needed for a transfer of such rights, and the history of the agreement shows that transfer of any such rights was never within the intent of the parties.

The 1802 agreement was executed by federal and state commissioners, pursuant to the Act of April 7, 1798, 1 Stat. 549, the Act of May 10, 1800, 2 Stat. 69, and Georgia Act of February 15, 1799, Digest of the Laws of Georgia (1801) p. 726. The federal Act of 1798 empowered the federal commissioners to agree with state commissioners to adjust conflicting claims of the United States and Georgia to lands west of

the Chattahoochee River, and to receive proposals for the cession of other lands claimed by Georgia "out of the ordinary jurisdiction thereof." [15] The 1800 federal Act authorized the federal commissioners to make final settlement of the claims mentioned in the 1798 Act and, on behalf of the United States, to receive cession of the lands referred to in that Act, or of the jurisdiction thereof,[16] on "such terms as to them shall appear reasonable," except that payment could come only from proceeds of the ceded lands. Sec. 10, 2 Stat. 70. Section 2 of the Georgia Act of 1799 required that the United States extinguish Indian title to certain lands in Georgia and cede the lands to the State. Digest of the laws of Georgia (1801) p. 726, 727–728.

Thus, so far as the legislative history shows, Article II of the agreement, *supra,* meant to refer only to the Indian lands required by Georgia, Indian title to which the United States undertook to extinguish by the Fourth condition of Article I. It does not appear that cessation of any other federal lands had been sought by Georgia or considered by anyone.[17] There had been no discus-

[15] Sections 3–8 also provided for a territorial government in the disputed area, without prejudice to the rights of Georgia or any other person "to the jurisdiction or the soil of the said territory." Sec. 5, 1 Stat. 550. The area ceded included the present States of Alabama and Mississippi north of the 31st parallel.

[16] One of the questions debated in Congress had been whether the United States should seek title to the lands, or only governmental jurisdiction. 8 Annals of Congress 1279–1284 (1798).

[17] Neither the commissioners in submitting the agreement to the President, nor the President in submitting it to Congress, gave any hint that it was the purpose to cede to Georgia any federal rights in the seabed. *American State Papers*, 1 Public Lands 113–114.

sion of seabed lands or resources, and it is at least doubtful that the concept of ownership of rights in such lands and resources had come into existence in 1802, particularly as to the seabed seaward of the three-mile limit, which is all that is involved here. Cf. *United States* v. *California, supra,* 332 U.S. at 31–34. Certainly Georgia had made no such claim. The Georgia Act of February 15, 1799, *supra,* providing for the 1802 agreement, quoted from Article I, section 23 of the Georgia Constitution (of 1798) the description of the State's limits as extending "from the sea or mouth of the river Savannah, along the northern branch or stream thereof," by a counter-clockwise course—

> to the head of saint Mary's river, and thence along the middle of saint Mary's river to the Atlantic Ocean; and from thence to the mouth or inlet of Savannah river, the place of beginning: Including and comprehending all the lands and waters within the said limits, boundaries and jurisdictional rights, and also all islands within twenty leagues of the sea coast.

That description is notably similar to the description of the limits of Louisiana contained in the Louisiana Enabling Act, which the Court, in *United States* v. *Louisiana et al., supra,* 363 U.S. at 67–70, held included no territorial sea. In short, the area now in dispute was neither claimed nor sought by Georgia in 1802, and was not even recognized as being subject to exclusive rights of the sort now in issue.

Lands beneath navigable waters are attributes of sovereignty, and unless they are granted in specific terms, are deemed to remain attached to the sovereignty to which by their nature they appertain. Thus, when the Proprietors of New Jersey returned their governmental powers to the Crown, while retaining their title to the lands of New Jersey, ownership of the bed of Raritan Bay returned to the Crown, as an attribute of sovereignty, rather than remaining with the Proprietors as real estate. *Martin* v. *Waddell,* 16 Pet. 367. Similarly, when New York and Massachusetts settled conflicting claims to part of western New York by the Treaty of Hartford, whereby New York retained sovereignty while Massachusetts was given title to the land, lands under Lake Ontario belonged to New York, as an attribute of its sovereignty, rather than to Massachusetts as real estate. *Massachusetts* v. *New York,* 271 U.S. 65. But whereas lands under *inland* navigable waters are an attribute of the domestic sovereignty of States, rights in the *seabed* seaward of the coast line appertain by their nature to the external sovereignty of the national government. *United States* v. *California,* 332 U.S. 19. Thus, when the Republic of Texas relinquished its national sovereignty to the United States and became a State of the Union, its rights in the seabed automatically passed to the United States as an attribute of the national sovereignty so relinquished. *United States* v. *Texas,* 339 U.S. 707.

Examining the words of the 1802 agreement in the light of these principles, we find no express or implied cession of rights in the seabed. As in the cases discussed above, the transfer of rights to the "soil" would not include lands under navigable waters. The question, then, is whether the cession of "jurisdiction" impliedly included rights in the seabed. If the United States had been relinquishing its national sovereignty, making Georgia an independent nation, that would have included a transfer of whatever rights the United States had in the adjacent seabed (if it had any at that time). But obviously the United States was not relinquishing in 1802 its "jurisdiction" as national sovereign; we must ascribe some other significance to the term. The obvious and only alternative is the sort of domestic jurisdiction, comparable to state jurisdiction, that the United States exercises in territories and in areas of exclusive federal jurisdiction.[18] But, as we have seen, rights in the seabed are not inherently attributes of that domestic jurisdiction, and do not pass to States when they receive their domestic jurisdiction from the United States. *United States* v. *California,*

[18] This interpretation of the term is corroborated by its use in that sense in Article I of the 1802 agreement, by which Georgia ceded to the United States "all the right, title, and claim, which the said State has to the jurisdiction and soil" of the western lands. *American State Papers*, 1 Public Lands 114. The term was used in the same sense in section 5 of the Act of April 7, 1798, which provided that establishment of a government for the western lands should be without prejudice to the rights of Georgia or any other person "to the jurisdiction or the soil of the said territory." 1 Stat. 550.

332 U.S. 19; *United States* v. *Louisiana*, 339 U.S. 699. It follows that the 1802 agreement gave no rights in the seabed to Georgia.

CONCLUSION

After receiving procedural suggestions from the defendant States, we urge the Court to enter an order establishing a briefing and argument schedule on the present motion (see pages 19–20, *supra*), and, ultimately, to enter judgment as prayed for in the complaint.

Respectfully submitted.

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